IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1215 OF 2004
IN
EXECUTION APPLICATION NO. 402 OF 2002

M/s. Devgan Entertainment and Software Ltd.	..	Plaintiffs
v/s.		
M/s. Satish Tandon Productions	..	Defendants
AND		
M/s. Linkhouse Industries Ltd.	..	Applicants

ALONGWITH
CHAMBER SUMMONS NO. 1795 OF 2003
IN
EXECUTION APPLICATION NO. 402 OF 2002
IN
AWARD DATED 20/2/2002

M/s. Devgan Entertainment and Software Ltd.	..	Applicants
v/s.		
Satish Tandon Productions	..	Respondents
AND		
Mr. Rasik G. Desai	..	Claimant

ALONGWITH
CHAMBER SUMMONS NO. 1781 OF 2004
IN
EXECUTION APPLICATION NO. 402 OF 2002
IN
AWARD DATED 20/2/2002

M/s. Devgan Entertainment and Software Ltd.	..	Applicants
v/s.		
Satish Tandon Productions	..	Respondents
AND		

Mrs. Mahdu Tandon .. Claimant

ALONGWITH
GARNISHEE NOTICE NO.1525 OF 2003
IN
AWARD DATED NO. 20.2.2002

M/s. Devgan Entertainment and
Software limited .... Complainants
v/s.
M/s. Satish Tandon Productions .... Respondents

Ms. A.M. Shah for decree holder/plaintiff.
Mr. A.M. Sarogi for the Applicant.
Mr. C.N. Mani, advocate for Garnishee/Labrotary.
Mr. G.A.S. Khandeparkar with A. Khandeparkar for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 17TH JANUARY, 2005.

P.C :

1. These three chamber summons are taken out alongwith Garnishee Notice No. 1525 of 2003. The plaintiff in the present case is a decree holder for a sum of Rs.39,50,000/- and interest thereon. Total Decreetal amount is of Rs.71,00,000/- By the present Garnishee Notice the plaintiffs are seeking to attach the negative rights in respect of the film known as ‘Jung’ in the hand of processing Laboratory. This Garnishee Notice is taken out under the provisions of

Order-21 Rule 46A of the CPC read with High Court Rules (O.S.). The Applicant in Chamber Summons No. 1215 of 2004 namely Link House Industries Ltd is claiming that the said negatives of the film is a security to their claim in respect of the finance advanced by them under the finance agreement dated 21.8.1998. Under Clause-3 of the said finance agreement it has been provided that that the negatives of the film will be a security to the judgement debtor towards the amount lent and advanced as and by way of finance for the production of the film ‘Jung’.

2. In view of the said rights created in favour of M/s. Linkhouse Industries Ltd, they have taken out the present Chamber Summons inter-alia seeking relief that the attachment levied in respect of the said negatives of the said film ‘Jung" which is lying in the custody of Ramnord Laboratory be lifted and that M/s. Linkhouse Industries should be permitted to exploit the said film.

3. It is an admitted position that the said film is merely a security towards the claim of M/s.

Linkhouse Industries and that the right, title and interest in respect of the said film continues to vest in the judgement debtor. Thus in my opinion the said film belongs to the judgement debtor and therefore can be attached and sold for execution of the decree in favour of the plaintiff herein. Undoubtedly the said sale proceeds received therefrom will be subject to the first claim being satisfied of the Ramnord Laboratory in respect of the laboratory charges and thereafter the claim of M/s. Linkhouse Industries Ltd because the said negatives are a security under an agreement dated 21.8.1998. Mr. Saraogi, learned counsel for M/s. Linkhouse Industries is unable to indicate how much amount he has already received by distribution of the said film as against the amount lent and advanced of Rs.2.00 crores and what is the amount due and payable to him towards the said finance arrangement. The laboratory charges according to the learned counsel for Ramnord Laboratory is around Rs.19,49,471/-

4. The learned counsel for the plaintiff has submitted that infact there is a collusion among the parties to defeat the decree. However the learned

counsel for the plaintiff is not able to establish such collusion by any material or evidence in support thereof. In the circumstances, I pass the following order :

(i) the negatives of the film ‘Jung’ shall remain attached and the Sheriff of Bombay shall proceed further and grant exploitation rights of the said film by inviting necessary bids from the third parties.

(ii) However in view of the nature of the property the Sheriff will continue to keep the said film with Ramnord Laboratory and he shall direct that the parties whose bid is accepted as highest bidder for the said exploitation rights can take possession of the film directly from the said laboratories. However, the same will be open only on Sheriff’s written instructions issued to the laboratory in that behalf.

(iii) The third parties in whose favour the

rights are conferred shall deposit the entire amount with the Sheriff of Bombay before taking possession of the negatives of the film from the laboratory.

(iv) The said amount shall remain to the credit of the present suit.

(v) The Commissioner of Taking Accounts is directed to determine the balance amount, if any, payable to M/s. Linkhouse Industries Ltd after adjusting the amount already received by them towards finance arrangement of sum of Rs.2.00 crores.

(vi) The amount received from sale proceeds of the said negatives will be disbursed as well :

(a) The laboratory charges of Ramnord Laboratary shall be paid at first instance without waiting for

completion of enquiry of determination of the claim of the applicant herein.

(b) The balance of the determined amount of the applicant herein shall be paid thereafter since they hold security on the said negative.

(c) The balance amount if any shall be adjusted towards the decreetal claim.

. Chamber Summons no. 1215 of 2004 and Garnishee notice is disposed of accordingly.

5. Insofar as Chamber Summons no. 1795 of 2003 is concerned the same is for raising attachment in respect of Shop no.6 of Building Victoria, Shastri Nagar, Lokhandwala complex, Andheri (West), Mumbai-400 0f58, and all right, title and interest thereon. Mr. Rasiklal Desai, the applicant has taken out the present chamber Summons claiming right, title and interest in respect of the said shop. In support of the said

contention the applicant has relied upon an agreement dated 22.3.1996 which is duly registered in 1998. He has also relied upon the share certificate issued by the Co-operative Housing Society in respect of the said shop executed by the applicant herein. The said certificate is issued on 17.9.2000. He has also relied upon the bills for the maintenance charges and society dues paid to the society and receipt in respect thereof. The applicant has relied upon leave and licence agreement dated 24.10.2000 in which the applicant has given licence to one M/s. Satish Tandon Productions to use the said premises for eleven months on terms and conditions set out therein. On the basis of the aforesaid documents, the right, title and interest in respect of the said shop no.6 situated at Victoria Building, Shastri Nagar, Lokhandwala complex, Andheri (West), Mumbai-58 is claimed by the applicant herein. The learned counsel for the plaintiffs has submitted that they submit to the order of the court. In view of the aforesaid position, the present Chamber summons is made absolute in terms of prayer clause (a). The attachment of the said shop no.6 in Victoria Building, Shastri Nagar, Andheri (west), Mumbai-58 is

lifted and the Sheriff of Bombay is directed to remove the attachment and hand over the possession of the said premises to the applicant herein.

6. Chamber Summons no. 1781 of 2004 has been taken out by the wife of the judgment debtor in respect of various items mentioned in the warrant of attachment. In my order dated 8.12.2004 I had directed the applicant to deposit a sum of Rs.50,000/- towards cost of the said various items which are lying in the said premises. Both the parties agreed that the said amount be paid over to the plaintiffs- decree holder towards discharge of the decreetal claim and on such payment being made the said items which are set out in the warrant of attachment will be released and the same will be handed over to the applicant herein and the plaintiffs shall make no claim in respect of the said items nor a decree will be executed in respect thereof. Chamber Summons No. 1781 of 2004 is disposed of accordingly. However there shall be no order as to costs.

SD/-

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